

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AMITY S. JOHNSON,

Plaintiff,

v.

No. 1:23-cv-00226-KG-JMR

APPLE, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Plaintiff, who is proceeding *pro se*, filed a Complaint against Defendant Apple, Inc. *See* Doc. 1, filed March 17, 2023. The sole factual allegation in the Complaint states: “From 1983 until today I was terrorized by the notion of a future run by computers.” Complaint at 2. Plaintiff seeks the following relief: “My time data privacy art smile back.” Complaint at 5.

United States Magistrate Judge Jennifer M. Rozzoni notified Plaintiff:

As the party seeking to invoke the jurisdiction of this Court, Plaintiff bears the burden of alleging facts that support jurisdiction. *See Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (“Since federal courts are courts of limited jurisdiction, we presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction”); *Evitt v. Durland*, 243 F.3d 388 *2 (10th Cir. 2000) (“even if the parties do not raise the question themselves, it is our duty to address the apparent lack of jurisdiction sua sponte”) (quoting *Tuck v. United Servs. Auto. Ass’n*, 859 F.2d 842, 843 (10th Cir.1988)).

It appears the Court should dismiss this case because the Complaint does not show that Court has jurisdiction over this matter. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”). Plaintiff states: “Jurisdiction is invoked pursuant to 28 U.S.C. § 1331 – involves federal law.” Complaint at 2. However, there are no factual allegations showing that this action “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Consequently, there is no properly alleged federal question jurisdiction.

Order to Show Cause at 1-2, Doc. 6, filed March 20, 2023. Judge Rozzoni ordered Plaintiff to show cause why the Court should not dismiss this case for lack of jurisdiction and to file an amended complaint alleging facts that support the Court's jurisdiction over this case. *See* Order to Show Cause at 2. Judge Rozzoni also notified Plaintiff that failure to timely show cause and file an amended complaint may result in dismissal of this case. Plaintiff did not show cause, did not file an amended complaint and did not otherwise respond to Judge Rozzoni's Order to Show Cause by the April 10, 2023, deadline.

Plaintiff has not met her burden of alleging facts that support jurisdiction. Plaintiff's statement that "Jurisdiction is invoked pursuant to 28 U.S.C. § 1331 – involves federal law," without factual allegations showing her claim arises under federal law, is insufficient to establish federal question jurisdiction. "The complaint must identify the statutory or constitutional provision under which the claim arises, and allege sufficient facts to show that the case is one arising under federal law." *Martinez v. U.S. Olympic Committee*, 802 F.2d 1275, 1280 (10th Cir. 1986); *Firstenberg v. City of Santa Fe*, 696 F.3d 1018, 1025 (10th Cir. 2012) (holding *pro se* litigant's "reference in the complaint to four different sources of federal law" was insufficient to establish federal question jurisdiction); *Kucera v. Cent. Intelligence Agency*, 754 F. App'x 735, 737-38 (10th Cir. 2018) (affirming dismissal of *pro se* litigant's complaint for lack of subject matter jurisdiction where he "ha[d] not alleged facts sufficient to show" a viable claim under federal law).

The Court dismisses this action without prejudice for lack of subject-matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"); *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir.2006) ("[D]ismissals for lack of jurisdiction should be without prejudice because

the court, having determined that it lacks jurisdiction over the action, is *incapable* of reaching a disposition on the merits of the underlying claims.”).

Because it is dismissing this case, the Court denies Plaintiff’s motion to proceed *in forma pauperis* as moot.

IT IS ORDERED that:

- (i) This case is **DISMISSED without prejudice**.
- (ii) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs, Doc. 2, filed March 17, 2023, is **DENIED as moot**.


UNITED STATES DISTRICT JUDGE